

### **REMARKS**

This responds to the Final Office Action mailed on August 21, 2009.

Claims 1, 30, 35, 36, and 47-49 are amended, no claims are canceled, and no claims are added; as a result, claims 1-5 and 11-49 are now pending in this application.

#### **§ 102 Rejection of the Claims**

1. Claims 1, 4-5, 11-12, 14-18, 22-23, 30, 34, 36, 39, 41, and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaemmerer (U.S. 5,693,076).

#### **Concerning independent claims 1, 30, and 36:**

Applicant cannot find in the cited portions of Kaemmerer any disclosure of “the data message alert formatted at least in part using ASCII text,” as recited in claim 1, and similarly recited in claims 30 and 36. Instead, Kaemmerer appears to be related to “storing patient related data within an implanted medical device and retrieving and regenerating the patient related data using a generative grammar.” Kaemmerer at Abstract. Kaemmerer describes the mechanism to construct the message at column 4 to column 5, in particular:

In the practice of the invention, a generative grammar resident in the programmer is selected, and by following that generative grammar, a software algorithm in the **programmer prompts a physician to enter information by selecting menu choices or making data entries in data entry fields. These choices and values are used within the framework of the grammar rules comprising the grammar to construct a textual narrative about a patient in a human language. In the programmer, a digital bit string is assembled that identifies the generative grammar and encodes the choices and values as they are entered by the physician into a patient related data bit string.** Simultaneously, the corresponding textual narrative is composed and displayed for the physician, and an internal computer record of patient related data is maintained. The physician's entries invoke text and menus or data entry fields for the continuing narrative that depend upon the preceding narrative in a grammatically correct manner. When the narrative is completed, the resulting patient related data bit string is stored in the implanted medical device using conventional downlink telemetry. The stored patient related data bit string may be telemetered out on command and decoded to identify the generative grammar and to then regenerate the textual narrative or to assemble tabular data or the like in either the original

human language or in any selected human language for which a corresponding generative grammar exists. The regenerating process involves using the programmer-resident generative grammar to reconstruct the narrative and display it in the human language of the programmer-resident grammar in textual narrative form and to extract defined data for display in alternative tabular form.

**Advantageously, the patient related bit string, because it typically is an order of magnitude more compact than the narrative text it encodes, may be efficiently telemetered into a minimal amount of memory of an implanted medical device.** Storage of only the patient name, patient specific variables, including menu choices and alphanumeric data, allows paragraphs of regenerable text (several kilobytes in size) to be telemetered and stored in the device as several hundred bits. Only the comprehensiveness of the generative grammar, and not the amount of memory in the medical device nor the software in the programmer, determines what can be expressed by the physician about the patient, encoded as a bit string and stored in the implanted medical device.

Kaemmerer at col. 4, line 49 to col. 5, line 25 (emphasis added).

It is plain that Kaemmerer uses a specific mechanism to encode substrings of text as bits in a digital bit string. As explained in Kaemmerer:

The data entry and encoding process is depicted in FIG. 4. The data entry and encoding process uses software to: (a) prompt a physician for information used to construct a narrative report 64 about a patient, using a formal generative grammar read from a disk storage device such as CD ROM 70; (b) simultaneously construct a string of bits encoding the choices made by the physician in writing the narrative; and (c) simultaneously build an internal computer representation 104 of the patient's medical record. The physician makes selections from menus (such as the menu 67) using the stylus/pointing device 56 and the graphic display 55. The internal computer representation 104 allows menu choices (such as the menu 67) for further portions of the narrative 64 to reflect what has been described about the patient so far in this same narrative. The resulting patient related data bit string, because it typically is an order of magnitude more compact than the narrative text it encodes, may be efficiently telemetered into the memory of an implanted medical device 10.

Kaemmerer at col. 9, lines 36-54. This is further illustrated with reference to FIGS. 4, 6, and 10. Hence, Applicant respectfully submits that Kaemmerer's bit strings are not equivalent to ASCII or any other text data format. In fact, Kaemmerer appears to tout the purported advantageous nature of bit strings over text data.

Thus, because Kaemmerer fails to establish all elements of claims 1, 30, and 36, no *prima facie* case of anticipation exists with respect to these claims. Consequently, Applicant respectfully requests reconsideration and withdrawal of this rejection of these claims.

Concerning dependent claims 47-49:

Applicant has amended claims 47-49 to address the rejection based on descriptive material. Thus, Applicant respectfully submits that the claims are in proper form and request reconsideration and withdrawal of this basis of rejection of these claims.

Concerning dependent claims 4-5, 11-12, 14-18, 22-23, 34, 39, 41, and 47-49:

Applicant respectfully submits that the dependent claims 4-5, 11-12, 14-18, 22-23, 34, 39, 41, and 47-49 depend directly or indirectly from independent claims 1, 30 or 36, respectively. As such, these dependent claims incorporate all the recitations of claims 1, 30, or 36. Accordingly, Applicant respectfully submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of this rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

§ 103 Rejection of the Claims

2. Claims 3, 13, 19, 31-32, 37-38, 40, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaemmerer in view of Levine et al. (U.S. 6,327,501; hereinafter “Levine”).

Applicant respectfully submits that the dependent claims 3, 13, 19, 31-32, 37-38, 40, 42, and 43 depend directly or indirectly from independent claims 1, 30 or 36, respectively. As such, these dependent claims incorporate all the recitations of claims 1, 30, or 36. Accordingly, Applicant respectfully submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of this rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

3. Claims 20, 28-29, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaemmerer in view of Linberg et al. (U.S. 6,497,655; hereinafter “Lindberg”).

Applicant respectfully submits that the dependent claims 20, 28-29, 44, and 45 depend directly or indirectly from independent claims 1, 30 or 36, respectively. As such, these dependent claims incorporate all the recitations of claims 1, 30, or 36. Accordingly, Applicant respectfully submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of this rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

4. Claims 21, 25-27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaemmerer in view of Levine in further view of Mann et al. (U.S. 5,833,623; hereinafter “Mann”).

Applicant respectfully submits that the dependent claims 21, 25-27, and 33 depend directly or indirectly from independent claims 1 or 30, respectively. As such, these dependent claims incorporate all the recitations of claims 1 or 30. Accordingly, Applicant respectfully submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of this rejection of these claims. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaemmerer in view of Haller et al. (U.S. 7,181,505; hereinafter “Haller”).

Applicant respectfully submits that the dependent claim 24 depends indirectly from independent claim 1 and incorporates all the recitations of claim 1. Accordingly, Applicant respectfully submits that dependent claim 24 is patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of this rejection of this claim. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

6. Claims 35 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaemmerer in view of Greeninger et al. (U.S. 6,082,367; hereinafter “Greeninger”).

Concerning independent claim 35:

As discussed above with reference to claims 1, 30, and 36, Applicant respectfully submits that Kaemmerer fails to disclose “the data message alert formatted at least in part using ASCII text,” as recited in claim 35. The addition of Greeninger fails to rectify this deficiency. In particular, Greeninger is related to storing and playback of audio in an IMD. In view of this, Applicant respectfully submits that (1) one would not be motivated to combine Kaemmerer with Greeninger and (2) even if Kaemmerer and Greeninger were to be combined, one would not arrive at the claimed structure.

First, one would not be motivated to combine Kaemmerer with Greeninger. As discussed above, Kaemmerer emphasizes the compression mechanism of converting narrative strings to bit strings. On the other hand, Greeninger refers to analog voice data storage and playback. *See, e.g.,* Greeninger at col. 23, lines 21-36. Analog data, which can be many times the size of text data, is completely at odds with the stated advantage in Kaemmerer. Hence, one would not look to incorporate the teachings of Greeninger into Kaemmerer.

Moreover, even if one were to combine Kaemmerer and Greeninger, one would not arrive at the presently claimed structure. In particular, Greeninger does not provide a text input or refer to storing text data in the IMD – it is solely focused on storage and retrieval of audio data. Hence, the combination of Kaemmerer and Greeninger fails to provide “the data message alert formatted at least in part using ASCII text,” as recited in claim 35.

Thus, because neither Kaemmerer nor Greeninger establish all elements of claim 35, because one would not be motivated to combine Kaemmerer and Greeninger in the manner purported, and because even if one were to combine Kaemmerer and Greeninger, one would not arrive at the presently claimed structure, no *prima facie* case of obviousness exists with respect to this claim. Consequently, Applicant respectfully requests reconsideration and withdrawal of this rejection of claim 35.

Concerning dependent claim 46:

Applicant respectfully submits that the dependent claim 46 depends indirectly from independent claim 1 and incorporates all the recitations of claim 1. Accordingly, Applicant respectfully submits that dependent claim 24 is patentable for at least the reasons set forth above. Thus, Applicant respectfully requests withdrawal of this rejection of this claim. For brevity, Applicant reserves the right to present further remarks concerning the patentable distinctiveness of such dependent claims.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6951 to facilitate prosecution of this application.

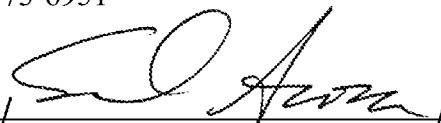
If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date November 23, 2009

By



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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 23rd day of November, 2009.

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Signature